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Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Waste Programs Division – Solid Waste Rule Development Process Stakeholder Workshops on Revised Draft Rule July 14, 2008, 1:30-4:30 p.m. and July 15, 2008 9 a.m.-Noon

NOTES

Stakeholder workshops to obtain input and review possible modifications to the Revised Draft Rule, redline version dated July 7, 2008, were conducted on July 14 and 15. The draft rule text can be found at: azdeq.gov/envIRON/waste/solid/integrated.html.

The purpose of these meetings was to respond to stakeholder comments raised at the June 24 and 25 meetings, and identify additional substantive issues. Italicized comments were recorded from comment cards submitted by stakeholders. A list of attendees is attached to this document.

Opening Remarks

Solid Waste Division Director Amanda Stone welcomed attendees and thanked participants for their comments and contributions to the solid waste rule development process.

Stone provided an overview of the formal rule development process, which is subject to change contingent on comments received. Solid Waste Rule development includes:

- Publish rule in Arizona Administrative Register; begin formal public comment – August 15.
- Conduct two formal hearings (Phoenix and Tucson) – within 32-33 days of date rule published.
- Submit response to all formal comments as part of preamble provided to the Governor's Regulatory Review Council.
- GRRC hearing – December 2, 2008
- If passed, rule becomes effective 60 days after GRRC hearing.

Introductions

Facilitator Theresa Gunn explained that the meeting agenda shown was for both July 14 and 15. Those with citation, spelling, grammar, and other similar issues were asked to e-mail these comments or record them on cards. Waste tire facilities were added to the agenda. Gunn facilitated introductions.

Stakeholder discussion included requests for additional time to respond to the draft rule.

Unattended Transfer Facilities and Material Recovery Facilities

Veronica Garcia, Waste Programs Division, reviewed changes made to Article 6 in response to stakeholder concerns. Highlights from her presentation, other staff comments, and responses to stakeholder inquiries included:

- Section 600(7) was added.
- Sections 601, 602, and 603(B, D and E) apply to unattended transfer facilities.
- Section 601 says that a material recovery facility or MRF is a transfer facility.
- A staffed drop-off facility is a transfer facility.
- The agency does not intend to cover on-site collection of solid waste, including recyclable solid waste, in this rulemaking.
- A maintenance worker is not considered staff.
- There is an example of non-petroleum contaminated soil in which leachate is a problem.
- Unless there is an impact to groundwater, the agency has limited ability currently to regulate the potential of a solid waste facility to discharge. The intent is to regulate run-on/run-off from the waste footprint – not the entire site.
- In Section 604, only (F) applies to unattended transfer facilities.
- A facility that is no longer active should be closed, as found in 605(E).
- Section 612 covers specific requirements for unattended transfer facilities. It is acceptable to derive a daily average from weekly counts.

Stakeholder comments follow.

Section

R18-13-600

- (1 and 7) – These items are the biggest concern to SWANA members.
- (7) – Should be “less than.”
- (7)(a, b and c) – This is confusing.
- (7)(b, c) – Suggest using “community drop-off sites” or convenience center.

R18-13-603

- The leachate requirement will cost county a quarter to a half million dollars.
- Should define what size a “community” is.
- Section will impose stormwater and leachate requirements on unstaffed drop-off areas.
- Does the agency have authority to regulate leachate?
- Move the general requirements to each section to clarify.
- Would like to see the science that leachate at a drop box is an environmental risk.
- (D) – What is stormwater run-on run-off control? What is needed to satisfy an inspector?
- (D) – Remove “unattended transfer facilities” from the coverage of this subsection.
- (D) – If we are in compliance with local codes, why are additional requirements needed?
- (D) – Should strike this subsection regardless of whether it is attended. This is not appropriate for the size of facility.
- (D)(1,2) – (There was consensus that there are no facilities in Section 600 that this subsection would apply to.)

R18-13-604

- An unattended facility would not have communication “designed” into the facility.

- Should add language regarding when no one is on the site, there can't be communication.
(A) – Insert the “unattended” exception.

R18-13-605

- If 605 applies to unattended transfer facilities, strike (D) wherever it appears.
 - An owner could avoid closing a facility by throwing in a bag of trash to get another 365 days.
 - It is possible that a surface impoundment would not be used for 365 days. *(Staff will address this issue.)*
- (E) – Closure is not well-defined. Could add language, “unless an extension is granted by the Department.”
- (E)(3) – Implies if there is any release over the life of the facility then sampling would be necessary. *(Staff will review).*

R18-13-607

- Definition of a material recovery facility does not use the same language as that found in Section 601. Need to make sure we exclude facilities that are meant to be excluded. Add “off-site” to clarity.

R18-13-610

- *Just to clarify: The July 22, 1992 EPA Memo for household hazardous waste and CESQG waste reduced the need for RCRA Subtitle C even if mixed CESQG at household hazardous waste exhibits a characteristic of hazardous waste and regardless of the quantity is not subject to 40 CFR Part 262 (90-day storage is in this regulation). Requiring self-certification by Arizona if stored over 90 days is a stricter regulation than as household hazardous waste only if the proposed regulation is not in line with this memorandum. The proposed regulation increases the burden instead of reduces the burden. Also, Arizona regulations do not allow stricter regulations than EPA (such as this EPA memorandum).*

R18-13-612

- What is meant by “routinely?” *(Staff will address this issue.)*
- (B)(3) – Change “prevent” to “minimize.”

Substantive issues to be reviewed by staff include:

- Stormwater run-on/run-off
- Leachate
- Tank issues
- 365-day standard

Asbestos Containing Material Disposal Subject to BMPs

Robin Thomas, Waste Programs Division, discussed changes made to Article 6 regarding asbestos. Highlights from her presentation, other staff comments, and responses to stakeholder inquiries included:

- Section 605 requirement to remove waste does not include asbestos monofills; the draft says these asbestos monofills should close according the general landfill closure provisions.
- Section 600(6) is stated as it appears in statute. An asbestos monofill is likely the only applicable facility.
- Staff will determine if there are facilities that would be included in Section 700(A)(10).

Stakeholder comments follow.

Section

R18-13-605

(E)(6) – This item is problematic when compared to ARS § 49-762.02.

(E)(7) – This is onerous for an asbestos-only landfill.

Composting of “Green Wastes”

Veronica Garcia reviewed changes made to the draft rule regarding green wastes. Highlights from her presentation, other staff comments, and responses to stakeholder inquiries included:

- The agency does not intend to regulate green waste-only facilities.
- Changes were made in Section 710(A)(2).
- Vegetative waste includes vegetables.
- Green waste ground with lumber would put a facility into the BMP or Self-Cert category.
- Regarding the example of adding pallets to divert them from landfills, the department has some flexibility. Staff will discuss the addition of vegetative-like wastes to the green waste exclusion.
- Staff will discuss green waste piles in place for more than 90-days, and whether this pertains to the pre-grind or post-ground materials. There may be nuisance issues.

Stakeholder questions and comments follow.

- When is green waste plus lumber considered compost or mulch? What about static piles with water added for dust control? May want to specify the length of time a pile can sit.
- The term in statute, “processed lumber,” could be taken to mean items such as plywood, but not other, unprocessed lumber.
- Seasonal issues could cause piles to sit for more than 90 days.

Recycling Facilities

Amanda Stone reviewed changes made to the draft rule regarding recycling. Highlights from her presentation, other staff comments, and responses to stakeholder inquiries included:

- In response to stakeholder comments, categories of items were removed from Section 700(B) including:
 - # Plastic, when treated or processed by heat or by chemical processing.
 - # Fluorescent lamps, lead acid batteries or mercury containing devices.
 - # Paper, cardboard, or wood waste treated or processed using chemical surfactants or bleaching agents excluding treatment utilizing enzymes.
 - # Spent solvents.
- Glycerin is not considered a glycol-based material here.

- This rule does not intend to regulate conditionally exempt waste generated on-site. Conditionally exempt waste generated off-site would be included.
- Staff will revisit antifreeze as the one item included.
- In Section 700(B) wastes are listed.
- Section 700(D) includes definitions. This section meets the statutory requirement found in ARS § 49-761(K) to identify a standard for a recycling facility.
- Those collecting antifreeze would not be included under Section 700(A)(11), but rather under the transfer facility sections.
- This rule does intend to regulate waste not regulated under hazardous waste.

Stakeholder questions and comments follow.

- There are conditions where a CESQG will recycle their spent solvents.
- Inadvertent consequences occur when recycling carbon cartridges, and when recycling at a manufacturing operation.
- The definition of recycling can either be based on the components being recycled or the process of recycling itself.
- The process should not be regulated. This will result in the regulation of wastes that are not as risky, and less regulation on wastes with greater environmental risk.
- There are discontinuities in recycling including:
 - # Hazardous waste defines what is and is not solid waste.
 - # The recycling process is not regulated under hazardous waste, e.g. solvent recycling is not regulated under RCRA.
 - # When compared to CESQG, the waste is now not regulated, but the recycling process becomes a solid waste facility. Large quantity generators would be exempt as well.
 - # Some material is handled different ways, and there are more stringent rules for a CESQG.
 - # When solvent is accepted through a tank system, this causes other questions as well.
- Limit the definition of recycling.
- Solid waste with a potential to harm the environment should be considered. Criteria should include the nature of the waste and the likelihood of mismanagement.
- The definition of solid waste in a non-hazardous waste context should be more narrow.
- Incoming material should be able to be stored 90-days before it is considered part of the recycling process.
- The primary function of a recycling facility should be recycling – not episodic recycling.
- At what point in the process of recycling does a solid waste no longer a waste, but perhaps a saleable product? *(Staff will consider this issue.)*

Transition Requirements for Facilities Subject to Plan Approval

Robin Thomas discussed transition issues. Highlights from her presentation, other staff comments, and responses to stakeholder inquiries included:

- In Section 1107(B), staff added criteria from Part 258 in response to comments about ground water monitoring suspensions.
- Under Section 1115(C, D), a non-MSWLF with an APP is not intended to be transitioned to plan approval.

- Additional language was suggested for 1101(A): The owner or operator of the following solid waste facilities, except those facilities that are operating under an existing Aquifer Protection Permit.
- The department would like to include landfills in area-wide mining permits.
- In Section 1105(C), the department is not reopening post-closure requirements for facilities that have begun the process.
- The state can only be more stringent than federal law in applying APP provisions to protecting groundwater.
- Facilities already permitted are not affected.
- Lateral expansion in this context refers to expansion outside the current permitted area. Because lateral expansion is used under Part 258 to include the area in the permit, staff will clarify the rule.
- Transition requirements do not apply to those with a Type III or IV changes in before the effective date of the rule (60 days after December 2, if the rule is passed at that time).

Stakeholder comments follow.

Section

R18-13-1105

(C) – Make consistent with ARS § 49-761(C).

(C) – Add language that new landfills on a mining site are included as part of the area-wide permit. *(Staff will discuss this issue.)*

R18-13-1106

- A change in operations from two days and 40 hours, to three days and 60 hours, should be a Type I change.

R18-13-1115

(A)(4) – This subsection should not be more restrictive than Subtitle D. *(Staff disagreed with this comment.)*

(A)(4) – Delete this subsection, because this is allowed under federal rules.

Landfill Liner Options

Robin Thomas provided an overview of changes made regarding landfill liner options.

Highlights from her presentation:

- In Section 1105(C), additions were made to reflect stakeholders' concerns. A definition of geosynthetic clay liner will be added to Section 101. *(Note: These changes were distributed at the meeting and will be e-mailed to stakeholders.)*
- Other landfill liner designs could be brought to the agency under (C)(1). The agency response would be subject to licensing timeframes, e.g. a Type III change such as a liner allows for 62 days.

Multiple Facilities and Financial Assurance

Robin Thomas reviewed issues associated with multiple facilities and financial assurance.

Highlights from her presentation and responses to stakeholder inquiries included:

- In Section 1802, (G) was added which allows for multiple facilities on contiguous land to submit one plan and one fee, with cost estimates attributable to each facility.
- Staff will consider streamlining the triennial fee to include the additional yearly landfill fees.
- Staff considers contiguous to allow for a public access road to cut through property.
- The financial assurance information has appeared in draft rule since September of 2007. Lack of comment from stakeholders has been interpreted as an affirmation of the draft.

Stakeholder comments included:

- The RCRA definition of contiguous is quite rigid. May want to define contiguous as it applies in this rule.
- Issues associated with financial assurance haven't been comprehensively vetted among the counties. Lack of input is not an affirmation of the draft.

Waste Tires

Highlights of staff comments regarding waste tires included:

- The agency has authority to establish more stringent standards based on titles 44 and 49.
- Dimensions for areas between tire piles in Section 715(B)(1) are consistent with the International Fire Code.
- Section 715(B)(5) is from the 2003 edition of the International Fire Code.
- States can adopt the International Fire Code as a minimum, or create more stringent rule.
- Staff agrees that Section 715(C)(7) should be changed to, "capacity of the facility to store waste tires."
- P.E. seal is required for engineering designs, and limited in this language to design and construction standards.

Stakeholder concerns regarding waste tires included:

- The counties do not have a comprehensive reaction to the draft rule at this time.
- County considerations include existing statutes, proposed rule, and legislation that will take effect on September 26.
- Local jurisdictions can adopt the International Fire Code or a modified version.
- There should be a clear benefit of maintaining the distance between piles requirement.
- Will sites utilizing city fire protection service have to add hydrants and hoses on-site? *(Staff will discuss this issue. Section 704(B) may provide guidance.)*
- Are these rules duplicative of other jurisdictions' rules?
- Our fire hydrant cost about \$50,000 in 2002.
- Suggest using the reports required by ARS §§ 44-1305 and 1306 and add any other information needed when these reports are submitted. *(Staff will clarify this issue so that counties do not duplicate reports.)*
- P.E. seal is not self-certification, it is P.E. certification
- ADEQ should already have the certificate of disclosure under ARS §§ 49-109. To file it again is duplicative and unnecessary.
- Need to ensure the language "owner or operator" appears throughout the waste tire sections.
- Would like an additional 60 days for comment on this section.
- How do we recognize facilities that collect antifreeze, batteries, oil and paint (ABOPs)? Is an ABOP facility a permanent HHW?

Section**R18-13-611**

(B) – The 100-foot buffer would leave me with one tall stack of tires right in the middle of my site. *(Staff will consider this issue.)*

R18-13-704

(B) – Training language is duplicative of OSHA, also Section 611(B)(5).

R18-13-715

(B) – How does this rule interface with the access requirements under ARS § 44-1304.01?

(B)(5) – The language in 704(B) meets the fire requirements. These should be suited to the type of facility.

(B)(5) – Should be allowable have to have sufficient fire fighting means such as fire trucks, jersey barriers, water trucks, fire extinguishers, back hoes and/or dirt as an alternative to the 500-foot hose from water source requirement.

(B)(5) – Strike this language and use the language in the general requirements. *(Staff will consider this option.)*

(F) – Change to, “The owner or operator of a facility described in subsection (A) shall submit annual reports to the Department in accordance with ARS §§ 44-1305 and 1306” and strike the remainder.

(F) – This is duplicative regardless of whether it refers to a county.

Other Substantive Changes to Draft Rule

Mark Lewandowski, Waste Programs Division, requested additional substantive comments about the draft rule.

Suggestions for changes and other comments included:

Article 1 – Definitions

- Define ABOP as a kind of facility.
- Solid waste.
- Solid waste facility.
- Define liquid waste disposal separately from recycling.
- Add definition of collection bins as found in Section 600(A)(7).

Airport – If definition is deleted, would have to add “public” to Section 1104 or any other use of “airport.”

Clean closure (a) – The concept of “or the closure requirements of an approved plan have been met” allows waste to remain and would not result in a clean close. Also, this is not found in ARS § 49-201.

Contaminated soil – Definition is basically about residential SRLs. This may not work throughout the rule such as regarding background contaminants. In Section 701(E)(2) may be problematic.

Contaminated soil – Should reference other methods to meet residential risk without causing regulation from other programs. There are situations where on-site remediation will result in levels above acceptable residential levels, such as naturally occurring arsenic in Arizona soils. (*Staff will consider this issue.*)

Director – Doesn't apply to the local health department throughout the rule. Need consistency.

Full quarter – Can't be "before" or would be more than a quarter.

Groundwater – Prefer a definition that includes a yield capability.

Incinerator – Need to allow for other beneficial uses such as flux material, or metal and mineral recovery. Another option is to omit all references.

Land disposal – Definition here is from RCRA and doesn't necessarily apply. It is problematic with the use of solid waste land disposal facilities in the rule. Placement of waste "in or on the land" is a problem.

Lateral expansion – Use another term, such as in Section 1115(A)(4) since this is actually an extension of the approved facility.

Material recovery facility – Add "off-site" facilities. Add concept of percentage of non-recyclable items.

Material recovery facility – Should say "does not include..." and list drop boxes, etc.

Recycling – Add: not including incineration "or liquid waste treatment."

Recycling – Covers materials that would otherwise become solid waste. Limit definition.

Recycling – Limits range of recycling. May not want to include definition. May want to limit definitions to solid waste and include RCRA's direct use exemptions.

Release – Believe this is meant to mean a release that serves as a trigger for corrective action. Could mean "stuff on the ground." Tie this to a category of unpermitted spills with an environmental impact. Qualify the use of "release" in the rule.

Release – Recommend adding (e) to include any release into a secondary container.

Solid waste land disposal fee – May need to alter if solid waste facility definition is altered.

Treatment facility – Should specifically exclude recycling from treatment.

Unattended – Several smaller facilities are unattended except through contract labor.

Wetlands – Definition is not the same as found in ARS § 49-772(H).

White goods – May no longer be in this rule. If so, end sentence at "disposal."

- There may be an issue in putting a new solid waste facility on a brownfield site.
- If ARS § 49-772(H) was included, 14 definitions could fall out.
- Where acronyms are found, should spell out the words first in the definition, then show the acronym.

Article 6 – BMP Facilities

Stakeholder issues included:

Sections R18-13-600/R18-13-700

- Need to address the issue of a transfer facility and a site that collects CESQG. Would like clarification on how the agency will regulate situations such as a service vehicle in field bringing back liquid waste. What is considered the site?
- Rain on waste piles with the potential to create leachate may bring unintended people into this rule.
- Change CESQG to "and." Change "less" to "more" than 90 days.

- Companies should be able to accept abandoned waste, or that which is picked up at neighborhood cleanups as generated waste without being viewed as accepting off-site waste.

R18-13-601

- Notification requirement is already in statute. Those who complied with statutory requirement should not have to comply with the rule unless an update is needed.
- (D) (3), (7), and (8) are rule additions not found in statute.
- Being open another day does not necessarily mean there is an overall increase in permitted disposal capacity.

R18-13-602

- Financial assurance is the only approval required for a BMP facility. Should provide an expedited process for BMP financial assurance review.

R18-13-603

- What kind of site security after hours will be acceptable for a BMP?
- (D)(2) – Remove stormwater requirements. This is allowed under AZPDES and is less stringent under that application.
- (D)(2) – Change “control and collect” to “manage” stormwater.
- (C) – Add “other than an unattended transfer facility.”
- (F) – Asbestos landfills have BMPs by statute, and should not have additional requirements.

R18-13-604

- Should be acceptable to submit information.

R18-13-604/R18-13-704

- Most of these requirements can be found under OSHA .

R18-13-605

- Subjects asbestos landfills to additional requirements.
- Due to the definition of release, this would require sampling in any release situation. Could quantify the release in Section 606(A). See also sections 705 and 706.
- (C) – 60 days public notice should apply to “facilities open to the public.”
- (E)(4) – Why is it necessary to prevent unauthorized use of a site if it has a clean closure?
- (E)(7) – Reference to sections 1113 and 1114 go beyond statute.

R18-13-607

- Waste screening is onerous to the small facility. Notification should occur in case of fire. Recommend screening to occur at the landfill, not at small transfer facilities.
- (C) – At a staffed facility, will notification be required if Styrofoam is found with cardboard?
- (D) – Change “prevent” to “control.”
- (E) – New tanks should not have to be tested.
- (E) – Add the same additional language now found in Section 607(D)(4), “other than what is commonly found in a municipal solid waste stream.” (*Staff noted that notification is not*

meant to include waste tires or a battery, and will consider a change to “discovery of an unauthorized waste.”)

Stakeholders also commented on the desire to allow the informal process to continue to allow for dialogue; the need for counties to come together to discuss issues; and, that substantive issue have been available for discussion only recently.

Closing Remarks

Amanda Stone overviewed the notification process, which includes meetings or notification to ACDEHSA, SWANA, Chambers of Commerce, County Supervisors Association, AAI, the nursery association, the mining association, NFIB, League of Cities and Towns, and many others. She stressed the agency’s desire to avoid promulgating a rule that is financially or technically burdensome.

The deadline for informal comment was extended from July 21 to August 1. After that time, Stone will brief the agency management to determine whether the rule should proceed to the formal process continue in an informal process. When a proposed rule is filed with the Secretary of State, it will also be e-mailed to stakeholders.

Attendees

Attendees, including those participating via conference call included:

John Barlow, Arizona Strip Landfill Corp.
 William Beebe, Metal Management
 J. S. Biedenbarn, Coconino County
 Pat Bourque, City of Flagstaff
 Garth Bowers, Cornerstone Environmental Group
 Donna Carlson, CRM
 Dean Cooke, Arizona Strip Landfill Corp.
 Curtis Cox, Arizona Attorney General's Office
 Greg Czerniski, Allied Waste
 Barton Day, Bryan Cave LLP
 Scott Donovan, City of Flagstaff
 Denette Dunn, Arizona Recycling Coalition
 David Eaker, Pima County DEQ-SWM
 Lana Fretz, Freeport-McMoran
 Colby Fryar, Pima County
 Mary Helen Giustizia, City of Tempe
 Chuck Hamstra, City of Phoenix
 Larry Hawke, Pima Cty. DEQ
 Lauren Hertz, City of Flagstaff
 Thomas Hillmer, APS
 Martin Jones, Gallagher & Kennedy

Douglas Junk, Cornerstone Environmental Group
 Jon Kawaguchi, City of Glendale
 Tom Kistler, Compliance Assurance Assoc.
 Margaret LaBianca, Bryan Cave LLP
 David Lickteig, Freeport-McMoran, Bagdad
 Frank Lomeli, City of Glendale
 Bryce Mares, Freeport-McMoran, Miami Inc.
 Robert Mills, APS
 John Moody, Miller, LaSota & Peters
 Matt Morales, City of Flagstaff
 Donna Moran, Town of Gilbert
 Karl Moyers, Santa Cruz County
 Vince Murphy, Waste Management
 Kent Norton, Freeport-McMoran
 Krishna Parameswaran, Asarco
 Cullin Pattillo, Mohave County
 James Peck, SWANA
 Mark Prein, APS
 Charles Ramer, Surprise Public Works
 Oscar Ruiz, Freeport-McMoran, Morenci
 Doug Sawyer, Allied Waste

Chris Schlabaugh, City of Chandler SWS
Norm Sendler, Microgy, Inc.
Sheree Sepulveda, City of Chandler
Montana Slack, Navajo County
Stephen Smith, Hydro Geo Chem, Inc.
Mike Smith, Yuma County
Jacqueline Strong, City of Chandler

Barb Sylvester, Brown & Caldwell
Scott Thomas, Fennemore Craig
David Wallis, Gallagher & Kennedy
Sharon Radanovich Winters, Gila County
Solid Waste
Joelle Wirth, Coconino Co. Health Dept.
Lori Zito, URS Corp